

Testimony in Opposition to SB 117
House Local Government Committee
Testimony of Jane Weber, Cascade County Commissioner
March 17, 2011

Good Afternoon Chairman McLaren and representatives of the House Local Government Committee. I am Jane Weber, one of three Cascade County Commissioners, address – 325 2nd Avenue North, Great Falls and this afternoon I am testifying on behalf of the bi-partisan consensus of the Cascade County Commission. Thank you for allowing me to speak in opposition to SB 117, an act providing local governments a process to DEMAND federal agencies “coordinate” with them before implementing federal plans within the county’s jurisdiction.

Let me begin by saying the Cascade County Commission opposes this legislation because it is not needed and may in fact be illegal. Federal law already exists and provides adequate direction on matters involving citizen and local government “coordination” in land management decisions. A letter signed by the three Cascade County Commissioners and sent to both the Senate and House Local Government committees on March 7th describes why in great detail. This afternoon, I will simply summarize the points made in that letter.

First, the Federal Land Policy and Management Act of 1976 (FLPMA), REQUIRES federal agencies to provide citizen opportunity for participation in land management decisions on federal lands, including public meetings or hearings at locations near the affected lands. Second, the National Forest Management Act of 1976 (NFMA) requires specifically, the Forest Service, to prepare inventories and land management plans and is very explicit about requiring public involvement in the making of those Forest Plans. These are only two of many federal statutes that require a public process when federal land management decisions are being made. The Bureau of Land Management, US Fish and Wildlife Service, Bureau of Reclamation to mention just a few, abide by or have similar mandates for public involvement. Although I am not as familiar with the Montana Environmental Policy Act and other state statutes, I know from projects with the Department of Natural Resources and Conservation, DEQ, and Montana Fish, Wildlife and Parks, that similar language in existing state statute also requires citizen participation in land decisions. The language in SB 117, is simply not needed to invoke public participation and coordination. Also, SB 117’s language that “coordination” means the federal government seeks to reach consistency between federal and county plans or policy may violate the Supremacy clause in the US Constitution and create costly litigation if passed.

Additionally, the requirement that counties conduct public hearings to discuss federal plans; in tandem with provisions allowing a resident elector of the county to file complaint against the county if said hearings have not been held; and further requiring county officials to explain WHY the county did not demand coordination is simply unreasonably time consuming and expensive for the county citizens.

Let me close by saying in the early part of the 20th century, a REPUBLICAN by the name of Gifford Pinchot, served as the first Chief of the Forest Service. His philosophy about the utilization of our nation's forests, waters, lands, and minerals was, and I quote, "*for the greatest good of the greatest number for the longest time.*" Pinchot not only understood the importance of sustaining yields for our nation's natural resources, he also understood the importance of involving citizens in land management decisions. Two other Pinchot quotes are on the wall of my County Commission office. Why? Because they remind me of the foundation he set for one federal agency with which I have a history; AND, because most federal and state agencies that I have worked with abide by these same premises. The first quote says, "*Public support of acts affecting public rights is absolutely required.*" The second quote says, "*It is more trouble to consult the public than to ignore them, but that is what you are hired for.*"

True enough. I hope you will consider one Republican's opinion from an earlier day and vote against SB 117, because people like Pinchot already created these procedures a century ago.



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CASCADE COUNTY

March 7, 2011

Representative Gary MacLaren
Chairman, House Local Government Committee
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FAX: 406-444-4825

Dear Chairman MacLaren,

The Cascade County Commission wishes to go on record in opposition to SB 117, a bill requiring local governments to demand coordination from the federal government, providing a procedure for demanding coordination and providing a procedure for allowing any voter to serve local governments with written complaint upon failure to comply with requirements for public hearings (amendments to MCA 7-1-114, 7-1-2103 and 7-11-1021).

Federal law currently provides adequate direction on matters involving citizen and local government involvement in land management decisions; thus negating the need for additional state legislation. I will provide two clear examples of how federal planning statutes solicit citizen and local government input. First, the Federal Land Policy and Management Act of 1976 (FLPMA) requires federal land management agencies 1) to conduct systematic inventories of the resources under their jurisdictional management; 2) to prepare land use plans using the concept of multiple use and sustained yield; and 3) to manage public lands "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values..." Additionally, FLPMA specifies public involvement will provide "opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands..." Second, the National Forest Management Act of 1976 (NFMA) requires the Forest Service to prepare renewable resource assessments/inventories, prepare and periodically update management plans (commonly referred to as Forest Plans), and provide opportunity for public involvement. Decisions made in Forest Plans are to be in accordance with the National Environmental Policy Act of 1969 (NEPA). Under NFMA, National Forest system lands are to be managed to "provide for multiple use and sustained yield of the products and services ... and in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness..." Additionally, the NFMA requires the Forest Service to provide for "public

participation in the development, review, and revision of land management plans..." Other statutes involving historic preservation incorporate the same process.


The language in SB 117, demanding coordination and requiring procedures for public hearings and litigation, would place an undue financial and time-consuming burden on county government. Additionally under NFMA and FLPMA, as well as many other federal land management laws, counties already have the ability to provide verbal comment on land management decisions at federal agency public meetings and written comment as part of the federal agency's analysis process. There is also a concern that the legislation violates the Supremacy clause in the U.S. Constitution and could engender time consuming litigation on this issue.

There are 178,662 acres of the Lewis and Clark National Forest within Cascade County. We have a good working relationship with the leadership and staff of the Lewis and Clark National Forest. The county is presently collaborating with the Forest Service on the cleanup of several Superfund sites within the county and on abandonment of a county road used only to access the National Forest for recreation purposes. Our working relationship with our fellow federal agencies is very good. The proponents of SB 117 represent the opinion of very few county commissioners; this legislation would create unnecessary requirements that would only serve to create tension between local and federal officials and create an undue financial mandate that counties can ill afford.

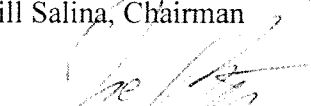
Please vote NO on SB 117.

Sincerely,

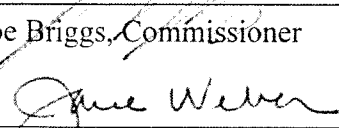
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